IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 577 OF 1994

Faruk Mohd. Valiulla ..Appellant

versus

The Union of India ..Respondents

Mr. G. J. Mohanrao for the Appellant.

Mr. A. N. Samant for the Respondents

CORAM : D. G. DESHPANDE,J.

DATE : 1ST APRIL,2005

ORAL ORDER :

1. Heard learned counsel for the parties.

2. The appellant was the original claimant before Railway Claims Tribunal, Mumbai. He filed an application for compensation of Rs.1,15,000/- for injuries which he suffered in the railway accident. Injuries were of the following nature (i) right leg crush injury and fracture to 2, 3, 4 fingers and femur, (ii) Right hand elbow, inside wound, (iii) Right thigh inside wounded, (iv) Right hand ring finger inside wound. This accident took place on 13.7.1992. He was returning from Mumbra and he boarded Ambernath Bombay V.T. local train to which

there was an accident. He was initially removed to Thane Civil Hospital. He was given stitches and glucose etc. But according to him nobody was paying attention to him. Therefore on the next day he got voluntarily discharged and then got himself admitted in the Ragini Hospital. As per the rules then existing i.e. Railway Accident Compensation Rules 1990 these injuries suffered were non schedule injuries and sub rule 3 of rule 3 fixed upper limit of Rs.40,000/- in respect of non schedule injury.

3. The original claimant has therefore filed this appeal against the order of the Tribunal by which he was awarded compensation at Rs.30,125/-. According to him he was entitled to full compensation of Rs.40,000/-. Counsel for the appellant contended that injuries suffered by the appellant were serious. He had to take treatment for five months, he had to be hospitalised and to undergo an operation and therefore the maximum compensation of Rs.40,000/- should have been awarded.

4. On the other hand Mr. Samant contended that though there was limit of Rs.40,000/- fixed for non schedule injuries, according to him this is not a case where compensation upto that limit i.e. Rs.40,000/- should be awarded. He contended that

the claimant - appellant was falsified from his cross examination with reference to any injury to thigh. There was no injury at all as contended by him. Further while awarding compensation, the Tribunal took into consideration period of hospitalisation, expenditure incurred and suffering through which the claimant had to undergo. Therefore according to him this is not a case of further enhancement of compensation. Mr. Samant also contended that after the order of the Tribunal awarding compensation was passed, the Union of India i.e. Central Railway paid amount of Rs.30,125/- to the claimant which he accepted and gave Full Discharge Receipt meaning thereby that he has accepted the Award fully. It was not acceptance according to Mr. Samant under protest and/or without prejudice. Therefore, according to him, firstly, the appeal is not maintainable and secondly no enhancement is required to be given.

5. According to the applicant he had a crush injury to the right leg. On the face of it if such an injury is there then the matter becomes serious. In order to verify as to what is meant by right leg crush injury, I perused the evidence of the appellant and also perused the documents i.e. certificate issued by the doctor. However, there is no explanation anywhere as to what is meant by crush

injury. Admittedly the appellant was travelling by local train and I am told that there was collusion between two trains. As an occupant of the local train he received those injuries. Therefore, in the circumstances, it was necessary for the appellant to prove as to what is meant by right leg crush injury, whether it was on account of falling of some heavy material or metal on his right leg or his right leg getting entangled into two smashing portions of the train. Nothing is there in his evidence where he has stated as under:

> **During the accident three fingers (toes) of my right foot were fractured, I received injuries in my right leg and also in right hand and ring finger of right hand. I also received injury to my right elbow. Each of the three fingers of right foot (toes) was having compound fracture."**

The appellant does not state anywhere that there was any injury to his femur bone. If that was there, then the matter would have become serious. But there is no injury to femur and there is no explanation of the so-called right leg crush injury. What were the injuries were described by me. What was the treatment and how much he has spent has been stated. What is clear from his evidence that there was no fracture of the femur bone nor any right leg

crush injury as is described by the appellant in his application.

6. No doubt because of the fracture of the toes, injuries could be labelled as grievous under the definition of the word "grievous injury" given in the Indian Penal Code. But they were all simple injuries resulting in partial disablement for a temporary period. Compensation awarded is adequate. No interference is called for. Appeal is dismissed. No order as to costs.

1.04.2005 (D.G. DESHPANDE, J.)